

Mr Greg Byrne
Department of Justice
GPO Box 4356QQ
MELBOURNE VIC 3001

6 July 2004

Dear Mr Byrne,

Re: Family Violence Court and Behaviour Change Counselling Program – Draft Legislation

We thank you for the opportunity to comment on the ‘Family Violence Court and Behaviour Change Counselling Program – Draft Legislation’.

Indigenous Australian’s Experience of Family Violence

Family Violence is a problem for Indigenous Australians, for instance, roughly eighty percent of Child Protection Notifications are related to family violence. In some instances, family violence is treated as the “norm”, and in response there have been community awareness initiatives to educate people that violence is not a part of Aboriginal culture.

Australian Bureau of Statistics figures indicate that in 1994 only 45%-50% of the Indigenous community considered family violence to be a major problem. Between 1994 and 2004 there have been numerous education campaigns about family violence and an increased awareness of its unacceptability. In 2004, the Federal Government commenced a campaign titled ‘Violence Against Women: Australia says No’. According to a VALS Family Law Solicitor, an abusive partner of a client expressed remorse for his actions after viewing a commercial.

There is such a need for services for Indigenous Australians in the area of family violence that the following specific initiatives have been established:

- Aboriginal and Torres Strait Islander Commission (ATSIC) Family Violence Strategy (launched 21 August 2003);
- Aboriginal Family Violence and Prevention Legal Service (established October 2002);
- Statewide Steering Committee to Reduce Family Violence (SSCRFV), which representatives of VALS have been involved in.

Indigenous Australians are calling out for the following initiatives to occur to address family violence issues:

- Recognition of the fact that there is a space for a non-criminal justice system response to family violence. The response to family violence should be holistic, in the sense of involving the Indigenous community.

- Police become more responsive to family violence within the Indigenous community.
- The establishment of ‘Time Out’ houses for violent offenders that enable offenders to be moved away from the victim, rather than locked up.

VALS Supports the Establishment of a Family Violence Court

In light of the above factors, it is essential that Indigenous organisations and the Indigenous community support the ‘Family Violence Court and Behaviour Change Counselling Program – Draft Legislation’ (draft legislation). It is essential that the Government is committed to considering the needs and experience of Indigenous and culturally and linguistically diverse communities.

VALS supports the draft legislation and the trialing of the Family Violence Court Division at Heidelberg and Ballarat Magistrates Court in early 2005. VALS agrees with the points raised in the letter received from you, introducing the legislation. The Family Violence Court will:

- Provide a more responsive and accessible legal response to family violence;
- Bring together crisis end services (ie: police, court, legal aid, family violence services) to provide a more integrated response when victims of family violence seek intervention orders, compensation or give evidence in criminal cases.
- Provide greater sophistication in dealing with cases. VALS distinguishes between a sophisticated and unsophisticated system on the basis of the degree of awareness of how to get the best outcome in the context of family violence.

VALS welcomes the establishment of a Family Violence Court as a specific initiative aimed at addressing distinct problems faced in the context of family violence. The need to inquire into the context of Indigenous family violence is an argument for the establishment of a specialized court. The Family Violence Court should inquire into factors such as the need to preserve an ongoing relationship between family members, Indigenous Australian’s culture, experience of dispossession and negative experiences with the legal system, socio-economic status and ability to access services. The specialized Family Court will gain knowledge of family violence issues affecting Indigenous Australians, and in term expertise in how to deal with the issues.

The Koori Court Model

VALS supports specialized court systems and notes that there are examples of other successful specialized courts (ie: Koori court). VALS argues that the Family Violence Court should strive for similar outcomes as that of the Koori Court, a specialist court dealing with criminal matters of Koorie people. An attribute of the Koori Court is that Magistrates take the time to consider the context of a case and how best to address underlying issues. The Magistrate is assisted with this task by members of the Indigenous community and Victorian service providers. Defendants can walk away from the Koori Court with a workable plan for the future and referrals to appropriate services. The Koori court is valued because it makes decisions using fair procedures. Individuals

tend to be happy with outcomes of court cases where procedural fairness is provided, whether or not they receive an outcome favourable to them.

VALS argues that the Koori Court model could be transferred across to a domestic violence model. The argument in favour of a Koori Court model is that it will promote the right to self-determination and produce workable solutions, as Indigenous Australians have first hand knowledge of problems within their community. If the Koori Court model was adopted, consideration would need to be given to situations where both a Indigenous person and non-Indigenous person are in a relationship. The non-Indigenous person should be given the option of having the matter heard in the mainstream court system, or the Koori Court.

VALS argues that if the Koori Court model is not considered appropriate, that the Family Violence Court should at least respect the cultural identity of Indigenous parties by involving the Indigenous community in training court officials and staff. The cultural training will inform court officials and staff about family violence issues affecting the Indigenous community.

Problems with the Current Response to Family Violence

VALS does not agree with arguments that a specialized family violence court is not necessary because family violence is no different to other types of violence or assault. VALS is concerned that some Magistrates and police exhibit this opinion, and argue that attitudinal change is required through education.

VALS is concerned that there are two extremes of service delivery experienced by people involved in family violence matters, that is positive and negative. VALS argues that legislative provision for a specialized Family Violence Court will provide some consistency in service provision. VALS acknowledges that there are certain locations where attempts have been made to adapt the court system to the context of family violence. According to a VALS Criminal Law Solicitor, Ringwood Children's Court is almost a Family Violence Court already.

However, there are locations where the current system is failing Indigenous Australians, and Australians in general, in family violence matters in the following manner:

- Police and court practices are not user friendly and unsophisticated.
 - When police take out an Intervention Order on behalf of a victim, the State is effectively intervening in this person's life and taking away their power.
 - The police consider it their role to be 'tough on crime', rather than having a welfare role. Intervention Orders are treated as a criminal matter, rather than a matter of safety. VALS is concerned by the 'pro-prosecution' slant of the proposed Police Code in family violence matters.

- The police and Magistrates, concentrate on the event in question (ie: assault for which the police were called), more than the need for the parties to maintain an ongoing relationship.
 - Magistrates rely heavily on ‘proforma orders’ and do not take the time to inquire into what the most appropriate order is in the circumstances, and as a result more likely to work. In contrast, in the proposed Family Violence Court, time will be taken to consider the context of family violence.
- People involved in family violence matters find the system stressful.
 - It is traumatic for a victim in the court room when the Magistrate unsympathetically drills them about the family violence, instead of relying on official statements.
 - There is a current culture in family violence matters that legal representation is not necessary and it is possible to just pop along and seek an Intervention Order. This raises the issue of complainant’s access to legal representation in Intervention Order matters.
 - The current system is not an effective integrated system, as the police, domestic violence services, the court or legal aid do not always work cohesively.

VALS support of the Proposed ‘Behaviour Change Counseling Program’

VALS notes that the proposed draft legislation goes further than simply creating a Family Violence Court. VALS supports the proposed ‘Behaviour Change Counseling Program’. VALS argues that the requirement of counseling goes hand in hand with a mandate of the proposed Family Violence court to inquire into the specific context of family violence.

VALS notes that it is a common experience of Indigenous Australians who come into contact with non-Indigenous institutions (ie: court system) that underlying issues are not addressed. Such an occurrence leads to the perpetuation of problems which are never effectively resolved. According to a VALS Family Law Solicitor, prescribed counseling is required because practically every second person has an anger management problem. If a relationship is to continue, there needs to be counseling, otherwise progress is unlikely.

VALS notes that a recent report, released by Vic Health on 16 June 2004 could be used to support the need for counseling of victims of family violence.¹ The report states that intimate partner violence is responsible for more ill-health and premature death among Victorian women under forty five than any other factor. However, it is the opinion of VALS that victims of family violence are best served by measures to prevent the occurrence of such violence in the first place.

¹ Vic Health Press Release ‘Family Violence is Bad for your Health’ 16 June 2004

VALS supports moves to empower the Family Violence Division of the Magistrates' Court to direct men, subject to intervention orders, to attend counseling programs to help stop their violent behaviour. VALS argues parallel counseling programs are required for individuals, groups, men, women and children. VALS notes that a similar counseling program to the proposed program operates in New Zealand, yet it is still too early to determine its success.

VALS is concerned that if there is inadequate funding for counseling programs, problems experienced in the child protection system will be repeated. In the child protection system parents are unable to meet conditions of Orders to access services due to lack of resources. The simple fact is that agencies must be available to act on referrals. VALS argues that care should be taken to avoid mistakes of the past. VALS notes that Indigenous Australians experience extreme disadvantage, especially in terms of accessing mainstream services. VALS also notes that Indigenous Australians prefer to access Indigenous services.

VALS recognizes the need for counseling programs, but will only support counseling programs that address the specific needs of Indigenous Australians, in terms of accessibility and cultural sensitivity. VALS argues that the Indigenous community should drive or have input in counseling services for Indigenous Australians. Counseling programs should recognize that the Indigenous community considers family violence a community issue. Counseling programs should be culturally sensitive and deal with family violence issues in a holistic manner.

VALS is concerned that in the absence of appropriate numbers of Koorie specific counseling and support services, the draft legislation runs the risk of compelling Indigenous men to access mainstream counseling and support services. In turn, this runs that risk that the counseling Indigenous men receive from mainstream services will be culturally inappropriate and inefficient.

Current Issues for the Victorian Aboriginal Legal Service relevant to the Draft Legislation

VALS takes this opportunity to inform you and ask for your support in relation to threats to the continuance of legal services for Indigenous Australians in their current form. In March 2004, Aboriginal and Torres Strait Islander Services (ATSIS) released the 'Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians' (Exposure Draft).

VALS is concerned that the Exposure Draft defines 'cultural sensitivity' in a weak form that does not require Indigenous involvement, either in terms of management or employment. The Exposure Draft states that priority one is representation 'where the safety or welfare of the child is at risk' and priority two is representation 'where the personal safety of the applicant, or a person in the applicant's care, is at risk'. VALS is concerned that whilst the Exposure Draft appears to cater for the provision of more

assistance to people affected by family violence, the level of service quality, in terms of cultural sensitivity, appropriateness and effectiveness, is cast into doubt.

By virtue of VALS' position as a specific legal service for Indigenous Australians, with an Indigenous Board of management and Indigenous employees, it is aware of Indigenous Australian's experience of the justice system in family violence matters. For instance, often victims of family violence do not wish to take out an Intervention Order for reasons such as the following:

- Fear of imprisonment of partners who break intervention orders and this includes a fear of deaths in custody and fear of police violence towards Indigenous Australians held in custody.

We thank you for your consideration of our submission and please contact VALS if you have any questions.

Yours sincerely

Victorian Aboriginal Legal Services Cooperative Limited

Frank E Guivarra
Chief Executive Officer